

# Executive Summary

In November 2003, Acting Deputy Administrator Stephen L. Johnson requested that a small work group be established to conduct a relatively quick internal review (approximately 120 days) of the Superfund program. The main objective of this review was to identify opportunities for program efficiencies that would enable the Agency to begin and ultimately complete more long term cleanups, also known as remedial actions, with current resources. This internal study is intended to complement the work being done by the Superfund subcommittee of the Agency's National Advisory Council for Environmental Policy and Technology (NACEPT).

The Agency currently has a backlog of sites that are ready for long term cleanup, but lacks adequate funding to begin the remedial action. To a large extent the shortfall is the direct result of the evolution and maturation of the program, with the universe of Superfund sites expanding in both number and type. Sites now entering the long term cleanup phase tend to be larger, require multiple remedies and are more complex than those originally placed on the National Priorities List (NPL).

This new and expanded universe has put increased demands on the program overall. Funding needs have increased further as a greater proportion of the sites have progressed through the study phase and into the typically more costly cleanup phase. A significant challenge before the Agency and Congress, therefore, is how best to navigate this period when there are high funding needs for long term cleanup. The extraordinary demands of the especially large sites make this challenge all the more difficult.

## **Congressional Action in FY 2004**

Over the last several years, EPA's senior managers have expressed concern about the Agency's inability to fund all of the Superfund long term cleanups that otherwise are ready to proceed. While EPA continues to address immediate public health threats through its short-term, emergency cleanup program, the Agency lacks adequate funds to address the growing number of sites that are ready for long term cleanups each year.

The House and Senate Appropriations Committees, and stakeholders outside of EPA, have also been concerned about this problem. Congress most recently expressed its concern during the Agency's FY 2004 appropriation in the following ways:

- The House Appropriations Committee in its FY 2004 report directed the EPA Inspector General to evaluate Superfund expenditures in EPA headquarters and

the Regions and to recommend options for increasing resources directed to cleanup while minimizing administrative costs.

- In its FY 2004 report, the Senate Appropriations Committee noted that the Agency was spending only 16 percent of the annual appropriation on site construction and long-term response actions, and directed the Agency to direct no less than 22 percent of the annual appropriation to site construction.

When the Conference Committee completed work on the Agency's FY 2004 budget, it did not direct the Agency to increase its percentage of funding for site construction. Rather, the Conference Committee made clear its expectation that the Agency direct the maximum amount possible to long term cleanup activities. The percentages in question represent how the Agency chose to distribute a portion of the Regions' funding. Those decisions on funding allocation were not intended to represent all funding dedicated to long term cleanup, though it is clear the Agency did not adequately communicate that fact.

This percentage understates the true amount the Agency spends on cleanups, reflecting only the extramural portion (what the Agency spends on cleanup contractors and other federal agencies), and does not include the cost of EPA staff necessary to manage the projects. The percentage also does not include short term, emergency cleanup actions taken at sites which contribute to the ultimate long term construction or the technical assistance required during the long term construction; and the EPA staff that support all of these activities.

In addition, at this point in the program, over 70 percent of Superfund cleanups are performed by potentially responsible parties (PRPs) as a result of EPA's enforcement program. The value of this work over the life of the program is more than \$18 billion as of September 30, 2003. Also not included is the cost of enforcement and oversight of potentially responsible parties (PRP) who are conducting cleanup

The use of a simple percentage measure like this also fails to consider the costs of all of the necessary steps that must occur before a site reaches the cleanup phase, both for sites funded by EPA and by PRPs. Those steps include investigation of the site, identification and testing to determine the extent of the problem, development of an acceptable cleanup plan, and coordination with the local community.

### **Study Findings and Recommendations**

The Superfund 120-Day Study is a short term, overall program review conducted by a team of EPA headquarters and regional staff who have knowledge and experience in the program, but are not all currently working in the program. Analyses of information from Agency data systems helped to frame areas for analysis. This was followed by additional data requests and an extensive number of interviews with Superfund program managers in headquarters and the Regions, as well as with selected outside experts. To supplement

the information gathered in the interviews, the study team prepared and sent out tailored questionnaires to gather program-specific information.

What became apparent to the study team as it spoke to a wide spectrum of Superfund practitioners across the country is that this is a complex, viable cleanup program with an effective enforcement component. Over time, the program has improved how it measures its progress, how it describes its work and achieves environmental results; however, there is still room for further improvement.

The Superfund program has two primary foci: the long term cleanup of contaminated sites, and the emergency response program. The emergency response program was originally designed to provide for rapid cleanup of sites to eliminate immediate threats to human health and the environment. Over the years, that response capability has evolved and expanded so that today, Superfund's emergency response mission involves not only waste sites, but train derailments, biological contamination of Senate office buildings, debris cleanup from the Colombia Shuttle disaster, and hazard assessment and cleanup at the World Trade Center after 9/11. EPA has to prepare for its ever expanding role in preparedness for counter terrorism response and Homeland Security such as continuity for operations plans and continuity of Government functions. Like a fire department, Superfund has to expend significant resources in staff, training and infrastructure simply to be prepared to respond when needed. The program has evolved as well as it addresses an ever changing list of Superfund sites which require long term cleanups, ranging from drum disposal sites and landfills, to abandoned smelters, sediments in rivers and harbors, and hard rock mining sites.

In addition, the program is complex administratively. Due to the need to track all of the Agency's costs at a site in order to recover those costs from potentially responsible parties, the Superfund program has a level of administrative complexity that does not exist anywhere else within EPA. This investment in the development of cost recovery cases has resulted in settlements with potentially responsible parties of \$3.9 billion as of September 30, 2003. The Agency has also worked closely with PRPs over the years to ensure that funds they submit pursuant to cash-out agreements are only used at specific sites or even specific portions of those sites. While these administrative requirements are burdensome, they give the Agency and PRPs confidence that the Agency is using the funds appropriately.

The recommendations on improving resource utilization can make the Superfund program even stronger and, if implemented aggressively, will measurably increase the resources available for remedial action construction, perhaps by tens of millions of dollars annually. Program policy recommendations also hold the potential to reduce future out-year funding needs by a similar order of magnitude. However, it is unrealistic to conclude that the recommendations of this report, however aggressively they are implemented, will fully address the projected funding shortfall of this changing program.

The most important recommendations on Superfund policies, with regard to the program's resource needs, are those that work to minimize the Agency's response funding needs. Key among these is:

- collaborating effectively with other federal and state cleanup programs under an integrated cleanup approach,
- using the NPL and Fund-financed actions as effective tools to leverage cleanups by others,
- maintaining a consistently strong enforcement program, and
- applying cost-conscious decision making in all facets of the program.

The study's findings fall into six key areas. They include:

- **Provide Leadership and Vision**

To address cross-office issues more effectively, the study team recommends the creation of an overarching internal Superfund Board of Directors to provide enhanced program leadership, program coordination and accountability. In addition, with the growing complexity of the program coupled with tightening of resources, the Office of Solid Waste and Emergency Response (OSWER) needs to more clearly articulate the hierarchy of cleanup goals. Headquarters offices and the Regions also need to reinforce these clear goals with several new or more focused performance measures.

- **Build on Past Successes**

After more than 20 years of operational experience and numerous program evaluations that have resulted in many improvements along the way, the Agency has many successes and lessons learned upon which it can build. The program is strongest when it integrates a variety of cleanup approaches and authorities into the overall response program. Much of the cleanup progress across the nation results from PRPs conducting over 70 percent of site work. To continue or enhance those results requires that the program continues to list sites on the NPL where appropriate, provide adequate funding for EPA to do the work where responsible parties are recalcitrant, and continue aggressive enforcement and cost recovery programs.

- **Continue to Develop a Better, More Effective Cleanup Program**

There are opportunities for further cost and time savings through such programmatic changes as reviewing and updating specific records of decision and broadening the scope of the National Remedy Review Board to drive down remedy costs. Other recommendations include improving the cost-effectiveness of the analytical support program, improving cost analysis capabilities, and possibly developing national standards for a limited number of high-priority

contaminants. OSWER has already been working with the Regions on a series of cost management initiatives.

- **Improve the Use and Management of Agency Resources**

The measures the study team identified to reduce demands on appropriated funds include improving the use of special accounts; speeding up the closeout of interagency agreements, grants, and contracts; and improving the timeliness of Superfund State Contract billing, obligations, reimbursements, and deobligations. Other suggestions include reviewing interagency agreements for possible cost efficiencies, such as negotiating consistent nationwide overhead rates with other federal agencies.

- **Improve Communications and Program Accountability**

The study team recommends that the Agency review how it is tracking Superfund's milestones and program accomplishments to ensure it is providing a comprehensive picture of today's Superfund program, especially to Congress. There is also value in conducting focused benchmarking studies to improve performance in individual Regions; this will foster innovation, competition, and use of agency-wide baseline standards.

- **Make Purposeful Resource Shifts to Better Link Organizational Structure with Program Needs**

Over the last 24 years, the Superfund program has grown both in scope and complexity. In the early years of the program, the focus of cleanup operations was on "traditional" uncontrolled hazardous waste sites; i.e., Love Canal or Valley of the Drums. Now the program is responsible not only for cleaning up these types of sites, but also for addressing more complex sites as well as responding effectively to complex 9/11 type of emergencies.

At issue is whether the program has maintained pace with changing program needs. With the evolution and maturation of the program, opportunities exist to use resources more effectively and efficiently, if not innovatively. Examples include but are not limited to, sharing work across Regions, relying upon focused areas of expertise (e.g. Centers for Applied Science among the Regional labs), and consolidating some support functions.

Together, the recommendations of this report can build on past successes and create a better, more efficient way to implement the changing Superfund program. They are intended to improve upon a program that is working well, not one that is broken and requires fixing. These recommendations represent the best current thinking on what EPA can do with existing authorities and resources to efficiently implement the Superfund program, toward the goal of increasing the pace of site cleanup.

## **Moving Forward**

Consistent with the numerous previous studies and analyses of the Superfund program, information collected during the study affirmed that Superfund is an inherently complicated and complex program, dealing with cleanup requirements that have been changing almost since it began 24 years ago. At the same time, Superfund has achieved a high level of success as it has carried out its mission.

Despite the Superfund program's complexity, and its unique administrative structure, it has made and continues to make significant strides in addressing abandoned and uncontrolled releases of hazardous substances across the country. With long term cleanups complete at nearly 900 NPL sites and more than 7,000 emergency cleanups conducted since its inception, the program is providing widespread benefits in terms of both human health and environmental risk reduction and providing opportunities for future beneficial land use.

Part of the program's success is due to its willingness to assess its strengths and weaknesses on an ongoing basis and to make modifications to improve cleanup approaches and administrative processes. Even now, as stated earlier, OSWER and the Regions are beginning to implement a series of cost- and time-saving recommendations, a number of which were affirmed through the study team's independent analysis. Likewise, the Office of Administration and Resources Management has been working with Agency senior managers to improve the management of grants and interagency agreements.

Nonetheless, the study team found opportunities for greater efficiency in the use of Superfund's current resources. There are several tangible, near-term opportunities for stretching existing resources further, and there are other promising means to move toward more efficiently using the existing level of resources in the longer term. If the recommendations of this study are aggressively implemented, this already strong and effective program will be even better.

While many of the implementation details will take time to work out, the Acting Deputy Administrator has confirmed his expectation that the Agency will move forward with two key aspects of implementation of the report's recommendations. First, the Acting Deputy Administrator will set up an internal Superfund Board of Directors. OSWER and the Office of Enforcement and Compliance Assurance Assistant Administrators will co-chair the board, whose members will include representatives from headquarters offices that have Superfund responsibilities and from the Regions.

The role of the Board of Directors will be to enhance overall leadership and coordination of all elements of the Agency involved with the Superfund program. Second, the new Board will be responsible for preparing, coordinating and executing an action plan(s) that addresses the recommendations contained in the following report. There are numerous recommendations in the report; however, the Study Team identified the top recommendations that would strengthen the leadership of the program and be most likely

to result in additional funding for long term cleanups. These recommendations also provide a blueprint for action for the new internal Board of Directors, and are identified in the last chapter of the study – Agenda for Moving Ahead.